

### **REMARKS**

Applicant has carefully reviewed and considered the Office Action mailed on April 16, 2007, and the references cited therewith.

#### **Status of Claims**

Claims 31-79, 82 and 83 stand rejected. Claims 31 and 61 have been amended. Claims 31-79, 82 and 83 remain pending.

#### **Examiner Interview**

Applicants appreciate the telephonic interview courteously granted by the examiner on September 25, 2007. During that interview, the examiner and applicants' attorney of record, R. Anthony Diehl, discussed amendments to clarify the claims and better distinguish over the cited references. Applicants submit that the amendments made above embody the proposed clarifications discussed during the interview. In the event that the examiner would like to discuss further amendments, the examiner is encouraged to contact applicants' attorney of record upon reviewing this Reply.

#### **§102 Rejection of the Claims**

Claims 31-33, 36-42, 49-59, 61-65 and 69-79 are rejected under 35 USC 102(e) as being anticipated by USP 7070577 ("Haller"). Applicant respectfully traverses this rejection.

As noted in the previous Amendment filed March 19, 2007, the present invention, as set forth in claim 31, requires a plunger assembly having first and second lateral segments, each in contact with the sidewall of the container. The lateral segments are connected by a shape memory element. Similarly, claim 61 requires first and second lateral segments biased apart by a spring and having an actuator to overcome the spring. As such, the fluid delivery device of the present invention, as set forth in claims 31 and 61, dispenses fluid by the movement of the plunger assembly through the container. To provide further clarification consistent with the discussion during the telephonic interview, independent claims 31 and 61 have been amended to recite a "syringe-type fluid delivery device," a "plunger assembly received wholly in the container," and a second lateral segment "laterally movable relative to the first lateral segment."

By contrast, Haller teaches a pump with no plunger or plunger assembly at all. Instead, Haller teaches a pump with a collapsible reservoir as opposed to a syringe pump. The elements 42, 53 and 54, which the examiner identified as part of a plunger assembly are, in fact, part of a valve assembly (see, e.g. Haller at col. 6, lines 17-67). Thus, the Haller pump functions not by the movement of a plunger through a static reservoir, but rather by the collapse of the reservoir regulated by the opening and closing of a valve.

The Office Action asserts that applicant's previous arguments with respect to Haller were not persuasive and relies on a "broadest reasonable interpretation" of plunger and points out that "no 'syringe pump' is claimed." Applicant submits that the clarifying amendments discussed above address both of these concerns raised in the Office Action and further distinguish claims 31 and 61 over Haller. To the extent that Haller could be considered to include a plunger, Haller does not identically disclose the claimed "syringe-type fluid delivery device" in which a plunger assembly is received wholly in a container.

Accordingly, applicant submits that the rejections of claims 31 and 61 under 35 USC 102(e) as being anticipated by Haller are improper and should be withdrawn. Moreover, since claims 32-59 and 62-79, and 82-83 depend variously from claims 31 and 61, those rejections are likewise improper and should be withdrawn.

Claims 31, 34, 35, 43-48, 60, 61, 66-68, 82, and 83 are rejected under 35 USC 102(e) as being anticipated by USP 7052251 ("Nason"). Applicant respectfully traverses this rejection.

Nason, like Haller, teaches a valve driven pump, not a syringe pump. Again, Applicant submits that the clarifying amendments discussed above further distinguish independent claims 31 and 61 over Nason. To the extent that Nason could be considered to include a plunger, Nason does not identically disclose the claimed "syringe-type fluid delivery device" in which a plunger assembly is received wholly in a container.

Moreover, the piston 120 of Nason is a unitary body whose lateral segments, to the extent such elements can be said to exist at all, are formed from the same unitary body and are not connected to one another by a shape memory element or spring/actuator. Nason does teach the use of a shape memory element, and/or spring/actuator, to move the piston 120, but the SME acts to move the piston relative to the chamber. It does not couple any lateral segments of the piston or, thereby, move the lateral segments of the piston relative to one another. The clarifying

amendment reciting that the second lateral segment is “laterally movable relative to the first lateral segment” further distinguishes over this piston structure disclosed by Nason.

Accordingly, applicant submits that the rejections of claims 31 and 61 under 35 USC 102(e) as being anticipated by Nason are improper and should be withdrawn. Moreover, since claims 34, 35, 60, 43-48, 60, 66-68, 82 and 83 depend variously from claims 31 and 61, those rejections are likewise improper and should be withdrawn.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant’s attorney of record to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 503188.

Respectfully submitted,

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By: /Kevin J. Carroll/  
Kevin J. Carroll  
Reg. No. 36, 384  
55 S. Commercial Street  
Manchester, NH 03101  
Telephone: (603) 668-6560  
Facsimile: (603) 668-2970